

1 STATE OF MINNESOTA DISTRICT COURT
 2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

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4 De-Aunteze Lavion Bobo,)
)
 5 Petitioner,) **TRANSCRIPT OF PROCEEDINGS**
) D.C. File 27-CR-06-087114
 6 vs.)
)
 7 State of Minnesota,)
)
 8 Respondent.)

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10 The above-entitled matter came duly on for hearing
 11 before the Honorable Susan Robiner, one of the judges of
 12 the above-named court, Minneapolis, Minnesota, on the
 13 **16th** day of **November, 2020.**

14
15 APPEARANCES:

16 **ZACHARY LONGSDORF, ESQ.**, Attorney at Law, appeared
 17 via Zoom, on behalf of the Petitioner.

18 **KACY WOTHE, ESQ.**, Assistant Hennepin County
 19 Attorney, appeared via Zoom, on behalf of the
 20 Respondent.

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1 **(The following proceedings were had in**
2 **open court:)**

3 THE CLERK: Your Honor, we're calling
4 Court File No. 27-CR-06-087114.

5 The parties present, please state your
6 names for the record.

7 MS. WOTHE: Casey Wothe for the State;
8 K-a-c-y, W-o-t-h-e.

9 MR. LONGSDORF: Zack Longsdorf on behalf
10 of De-Aunteze Bobo. Longsdorf is spelled
11 L-o-n-g-s-d-o-r-f.

12 THE COURT: Good morning, Mr. Longsdorf,
13 and good morning, Ms. Wothe, and good morning,
14 Madam Court Reporter.

15 We are here on a -- I guess what I would
16 call a -- well, it's a hearing taking place
17 between the hearing that took place last week in
18 which Mr. James testified remotely and the
19 hearing that is scheduled for I believe later in
20 the week in which the remaining persons will
21 testify. I believe I misspoke, let me get the
22 date correct. Yes, looks like we have it
23 scheduled for Thursday, November 19. And it made
24 sense to have a quick hearing between the two
25 evidentiary hearings in order to address any

1 motions *in limine* and give the parties an
2 opportunity to submit updated witness and exhibit
3 lists in light of Mr. James's testimony.

4 The Court received the petitioner's
5 amended witness list dated November 12th, and the
6 petitioner's amended exhibit list also dated
7 November 12th. And the Court also received the
8 State's motion *in limine* dated November 13. And
9 before I hear argument regarding the State's
10 motions *in limine*, I guess I just want to ask
11 whether any of the issues raised by the motions
12 *in limine* have been resolved between the parties.

13 MS. WOTHE: Your Honor, we have not had
14 the opportunity to discuss them so no.

15 THE COURT: All right. All right. Then
16 unless you folks have a different idea, I would
17 like to simply start with the State's motions *in*
18 *limine* and work through them. I may be able to
19 rule on some of them today; I may take some under
20 advisement.

21 The first motion *in limine* is a motion
22 to strike testimony offered by Mr. James at the
23 evidentiary hearing last week. And, Ms. Wothe,
24 you may proceed.

25 MS. WOTHE: Thank you, Your Honor. The

1 purpose of the evidentiary hearing granted by the
2 Court was for Sam James to come in and testify
3 consistent with his November 2018 affidavit which
4 was allegedly to offer information that he
5 himself was the perpetrator of this crime, not
6 Mr. Bobo. That was the scope of the hearing that
7 was granted by this Court.

8 As we are all aware, Mr. James invoked
9 his fifth amendment rights and refused to answer
10 questions as it relates to his own involvement,
11 and instead he provided testimony more consistent
12 with his 2007 trial testimony and his 2010
13 affidavit simply to the effect that Mr. Bobo is
14 innocent, and that the police pressured Mr. James
15 to offer this testimony.

16 The only, I guess, new, if you can even
17 call it that, information that Mr. James provided
18 that came from Mr. James was that he knows
19 Mr. Bobo is innocent because Mr. Bobo was with
20 Nikisha Armstrong during the murder. Now, as
21 this Court is aware, Ms. Armstrong provided an
22 affidavit which the defendant attached to his
23 application for post-conviction relief which this
24 Court denied relief as it relates to because
25 simply the allegation that the defendant was with

1 Ms. Armstrong the night of the murder does not
2 meet the test for newly discovered evidence
3 because nothing would have prevented the
4 defendant from offering evidence to this effect
5 during the trial in his case.

6 So, Your Honor, because this court has
7 already denied relief as it relates to this
8 claim, and because Mr. James's information
9 compared to Ms. Armstrong's affidavit, who would
10 even if this was true she would actually have
11 firsthand knowledge of this compared to
12 Mr. James, his claims are beyond the scope of the
13 hearing, are cumulative, and they do not pass the
14 test for newly discovered evidence, therefore
15 the State is moving that those portions of his
16 testimony be stricken from the record.

17 THE COURT: Ms. Wothe, why didn't you
18 object at the time?

19 MS. WOTHE: Your Honor, I didn't object
20 at the time largely because I knew we were having
21 this motion hearing and we were addressing this
22 in the Zoom format. I thought, you know, it's --
23 if we were in front of a jury, I would have, but
24 because this is a matter where we are before the
25 Court and we can trust the Court to ultimately

1 make the right decisions about what is ultimately
2 admissible into the record when finally deciding
3 this issue, I thought simply for purposes of ease
4 and convenience given the Zoom format that this
5 would be the more appropriate format to address
6 this motion.

7 THE COURT: Thank you.

8 Mr. Longsdorf.

9 MR. LONGSDORF: Thank you, Your Honor.
10 We're definitely opposed to the request to
11 strike. I think it's -- it is correct that Sam
12 James didn't testify when asked how he knows
13 Mr. Bobo is innocent by and large, and when asked
14 if he was the person who was driving, but I do
15 think that testimony from him that he saw
16 Mr. Bobo on the night at issue and left -- or,
17 excuse me, saw that Mr. Bobo was with Ms.
18 Armstrong, and I can't remember if he said their
19 child as well, but I think that's what he said, I
20 do think that goes toward whether or not Sam
21 James was telling the truth at trial, and I do
22 think there's at least an inference based on that
23 that it means that he was, if Mr. Bobo wasn't the
24 one who did it that maybe Sam James was. And in
25 the position we're in where I guess we're looking

1 at sort of the 804(b)(3) factors to try to get
2 Sam James's affidavit and the other evidence in,
3 I do think that is corroborating evidence that
4 goes toward that.

5 THE COURT: Ms. Wothe, with regard to
6 other aspects of the State's motion *in limine*,
7 you make an 804 -- you make a statement against
8 interest argument, but you don't make that
9 argument with regard to this particular
10 statement. So setting aside your primary
11 argument which is that I've already ruled leaving
12 out testimony essentially regarding Nikisha
13 Armstrong, what's your position regarding a
14 hearsay analysis on that testimony?

15 MS. WOTHE: Your Honor, as I recall the
16 testimony, the way Mr. James worded the testimony
17 wasn't that Mr. Bobo told him he was with
18 Ms. Armstrong or that Ms. Armstrong told him, so
19 I don't think Mr. James ever really said how he
20 knew that so I don't think my objection to that
21 would be hearsay, perhaps foundation, but
22 ultimately I think that's going to be -- if Your
23 Honor does leave that testimony as part of the
24 record that's simply going to go to the weight
25 that Your Honor should afford it. And given the

1 lack of information as to how Mr. James came to
2 know this information, I would argue ultimately
3 that's still in the record that the Court should
4 afford it minimal weight.

5 THE COURT: Okay. Now that I think
6 about it, it sounds like it was a goofy question
7 on my part because I think -- I haven't reviewed
8 my notes, but I think Mr. James actually
9 testified that he was present in the house and
10 therefore saw Ms. Armstrong and Mr. Bobo,
11 alleviating any hearsay issues. I think -- I
12 think that's -- as I'm recalling, I believe
13 that's how he testified which sort of takes the
14 hearsay issue out of it.

15 Is there anything else that you want to
16 add on this motion *in limine*, Ms. Wothe?

17 MS. WOTHE: I have nothing additional.

18 THE COURT: Anything further,
19 Mr. Longsdorf?

20 MR. LONGSDORF: Just that your
21 recollection is consistent with mine, Your Honor,
22 that Mr. James said he was aware of who Mr. Bobo
23 was with because he was there.

24 THE COURT: Okay. Thank you. I want to
25 go ahead and move forward to the second motion *in*

1 *limine*. I tell you what I'm doing on this first
2 one, I'm going to defer ruling on it and move on
3 to the second motion *in limine*.

4 The second motion *in limine* is seeking
5 to preclude petitioner from offering
6 Ms. Armstrong as a witness. Indeed, Ms.
7 Armstrong is on the petitioner's amended witness
8 list.

9 And, Ms. Wothe, you may proceed.

10 MS. WOTHE: Thank you, Your Honor. I'll
11 be brief. It's simply that this Court has
12 already reviewed Ms. Armstrong's affidavit and
13 rules that because her -- the substance of what
14 her testimony would be does not meet the test for
15 newly discovered evidence, the defendant is not
16 entitled to relief as it relates to her purported
17 testimony. So given this Court's previous
18 ruling, I would ask that this Court preclude her
19 from being able to offer testimony consistent
20 with that affidavit at any evidentiary hearing.

21 THE COURT: Thank you.

22 Mr. Longsdorf.

23 MR. LONGSDORF: Thank you, Your Honor.

24 Ms. Armstrong's testimony would be offered
25 essentially to corroborate some of what Mr. James

1 said, which I think goes to the 804(3)(b), but
2 also initially it was offered, if we're looking
3 at this under either Renier or Larrison, her
4 testimony was offered because what we believe
5 corroborates at least some of what Sam James
6 would have said if he would have testified. And
7 so it wasn't that this was necessarily intended
8 on its own to be newly discovered evidence but
9 that it would corroborate, and so that would be
10 the purpose we would offer it for. And I think
11 given the posture of this case that it would be
12 appropriate to accept that testimony and then
13 determine what weight to give it.

14 THE COURT: To be clear, the testimony,
15 the contemplated contents of the testimony is
16 essentially what is in the Armstrong affidavit.

17 MR. LONGSDORF: I expect that she would
18 testify almost exactly consistent with that, Your
19 Honor, but I don't -- I can't guarantee that.

20 MS. WOTHE: Your Honor, may I respond to
21 that, about the circumstantial guarantees of
22 trustworthiness aspect?

23 THE COURT: Go ahead. Well, wait a
24 second. Talking about Nikisha Armstrong, why
25 would she be considered an unavailable witness?

1 Are we talking about -- isn't 804(b)(3) only
2 related to unavailable witnesses?

3 MS. WOTHE: Yes, Your Honor. But as I
4 understand it, defense wants to offer her
5 testimony to help somehow why Mr. James's
6 affidavits are -- do have the guarantees of
7 trustworthiness to help show why his statement
8 should come in under 804(b)(3). That's how I'm
9 understanding it, but please correct me if I'm
10 wrong, Mr. Longsdorf.

11 MR. LONGSDORF: That's correct.

12 THE COURT: All right. So you want
13 Nikisha Armstrong's testimony in part to shore up
14 your argument regarding James's affidavit coming
15 in. Okay. I'm with you.

16 Go ahead, Ms. Wothe.

17 MS. WOTHE: Thank you. So as I looked
18 at the factors that the Court would need to
19 evaluate in determining if Mr. James's affidavit
20 or, you know, hearsay statements do have the
21 circumstantial guarantees of trustworthiness in
22 order to come in under 804(b)(3). The only
23 factor which I think would be relevant to
24 Ms. Armstrong's testimony is whether other
25 evidence corroborates the facts in the hearsay

1 statement. And there is such a minimal
2 connection between what she would offer and what
3 Mr. James's hearsay statements are, Your Honor,
4 that there is -- this Court should afford little
5 weight to what she has to say. What she would
6 purportedly say is De-Aunteze Bobo was with me
7 that entire night. Sam James's hearsay statement
8 that defense wants in is that I committed the
9 crime, not De-Aunteze Bobo. Therefore Ms.
10 Armstrong has no knowledge about what Mr. James
11 did that night, and that's the hearsay statement
12 that defense wants in. So because her purported
13 testimony offers no knowledge about what Mr.
14 James actually did, I don't think it goes at all
15 to any of the six factors that this Court would
16 need to evaluate in determining if defense has
17 met their burden under 804(b)(3).

18 THE COURT: Okay. Anything further,
19 Mr. Longsdorf?

20 MR. LONGSDORF: Just that if
21 Ms. Armstrong is aware that Mr. Bobo was with her
22 the whole night and left with her, that does, I
23 think, corroborate what Sam James has said or
24 what is in these hearsay statements that we're
25 offering in that if Mr. Bobo was with her he

1 couldn't have been with -- with Leonard Slaughter
2 or in the vehicle that was outside of Stand Up
3 Frank's, so I do think it does offer some level
4 of corroboration.

5 THE COURT: Well, that -- that's -- how
6 does that corroborate that Sam James is the
7 perpetrator? I can see how it corroborates some
8 theory in which petitioner Bobo is not the
9 perpetrator, but those are two different things.
10 Ruling out someone and ruling in another person
11 are two different things, aren't they? I mean,
12 help me here.

13 MR. LONGSDORF: I think that's correct
14 that her -- her statement doesn't say that it was
15 Sam James which is, you know, the statements
16 essentially that we would offer from Sam James
17 would be, you know, how does he know that
18 Mr. Bobo wasn't involved, was he actually the
19 driver, and why did he change his mind. And so I
20 guess this corroborates at least circumstantially
21 that if Mr. Bobo wasn't there Mr. James could
22 have been or was.

23 THE COURT: Well, looking at -- looking
24 at her affidavit and comparing it with
25 Mr. James's affidavit, and for that matter,

1 Mr. James's testimony last week. Well, let's
2 stick with Mr. James's testimony last week. He
3 testified that he was in this house with
4 Ms. Armstrong, petitioner Bobo, and I believe
5 their common child. And so you want
6 Ms. Armstrong's testimony to come in to
7 corroborate, I guess, that aspect, I don't know
8 what else she could corroborate, but her
9 affidavit is absolutely silent regarding Mr.
10 James. In other words, if she testifies
11 consistently with her affidavit, she will not
12 mention Mr. James at all. So I don't see how
13 it's a corroborating testimony. And I'm ruling
14 that on that basis, and on the basis of my order
15 dated August 6, 2020, I am excluding the
16 testimony of Ms. Nikisha Armstrong for the
17 reasons set forth in this hearing today, as well
18 as the reasons set forth in the order dated
19 August 6, 2020, in which I did not support
20 proceeding to a hearing with the affidavit
21 testimony of Ms. Armstrong.

22 And the next motion *in limine* is sort of
23 a three-parter, it's denying the admission of
24 three items. One is the James affidavit. The
25 second is testimony from Investigator Grostyan,

1 presumably regarding obtaining the James's
2 affidavit. And, third, recordings of jail calls
3 between James and R.D. And presumably that would
4 be -- well, those are apparently some jail calls
5 that were recorded. I know nothing about them
6 except they were the subject of one or two brief
7 questions last week.

8 Ms. Wothe.

9 MS. WOTHE: Thank you, Your Honor. I'll
10 address first James's affidavit and testimony
11 from the investigator, as I believe they go hand
12 in hand. Your Honor, the State's moving to
13 preclude defense from being able to offer either
14 of these because they are inadmissible hearsay.
15 Your Honor, these are purely out-of-court
16 statements that would be offered for the truth of
17 the matter asserted and no exceptions apply.

18 Now, it's my understanding that defense
19 is going to move to admit these under 804(b)(3),
20 and it's the State's position that Mr. James
21 wasn't actually unavailable, but even if he was,
22 the substance of the affidavit and any testimony
23 surrounding its creation lack the circumstantial
24 guarantees of trustworthiness in order to be
25 admissible under 804(b)(3).

1 Turning first to whether or not he was
2 actually unavailable, Your Honor. The standard
3 is the that the declarant persists in refusing to
4 testify concerning a subject matter of the
5 declarant statement despite a court order to do
6 so.

7 Your Honor, Mr. James testified, I
8 think, rather much more extensively than any of
9 us anticipated he was going to last week. He
10 made himself quite available for a number of
11 defense questions. He offered evidence
12 attempting to show Mr. Bobo's innocence by
13 testifying that Mr. Bobo is innocent, Mr. Bobo
14 wasn't there. So he did make himself available.
15 It wasn't a persistent refusal to testify, and
16 his only part of refusing to testify was when he
17 made -- or when questions were asked about his
18 own involvement.

19 Your Honor, but even if you were to rule
20 that he is unavailable, we do concede certainly
21 that the statements would be against his penal
22 interests, but the final prong is that this Court
23 needs to make a finding that the -- that the
24 statement has those circumstantial guarantees of
25 trustworthiness in order to be admissible.

1 I set forth the six factors that this
2 Court -- or the six factors that this Court
3 should consider in its motions *in limine* and,
4 frankly, Your Honor, all six factors weigh
5 against admitting either the affidavit or the
6 investigator's testimony about it.

7 Turning to the first factor. As the
8 Court remembers from the trial, there was
9 significant evidence actually corroborating
10 Mr. James's trial testimony such as the
11 defendant's access to a number of dark SUVs, and
12 more importantly the cell phone tower evidence
13 linking his -- the phone he said was his number
14 to Mr. Slaughter's phone before, during, and
15 after the murder. However, as opposed to
16 Mr. James's testimony, there is no corroborating
17 evidence linking him to being the perpetrator of
18 the murder.

19 Turning to the second factor. Mr.
20 James's statements have, frankly, been all over
21 the place by now. Prior to grand jury, he gave
22 two statements to police implicating Mr. Bobo.
23 He then testified at grand jury again consistent
24 that Mr. Bobo was the driver in this murder. And
25 then since trial his statements have flipped to

1 be then that the defendant is innocent and that
2 it was police who came up with this narrative of
3 having Mr. James create false testimony just to
4 get some person off of the street. Testimony of
5 which Sgt. Folkens directly addressed in the 2007
6 trial and denied, saying that he never told
7 Mr. James what to say, never provided him money,
8 et cetera.

9 After that Mr. James has done a 2010
10 affidavit saying the defendant is innocent. He
11 testified in 2013 saying the defendant is
12 innocent. And now all of a sudden in 2018 it is
13 yet another new narrative that Mr. James himself
14 is the perpetrator of the offense. So what we
15 see across the board is inconsistencies when the
16 jury was able to hear the grand jury testimony
17 and afford that its credibility.

18 The relationship also weighs against
19 admitting the statement given the fact that both
20 Mr. James and Mr. Bobo are related, are members
21 of the same gang. And certainly there is a
22 reasonable inference that because Mr. James
23 testified against a fellow gang member that there
24 are inherent pressures on him to now do good by
25 Mr. Bobo and try to get him out of this.

1 To the fourth factor, I think that same
2 analysis applies. I think Mr. James has every
3 reason in the world to fabricate his 2018
4 affidavit. It's again because him being not only
5 in the same gang, but also Mr. James himself
6 received a 60-month prison sentence for his own
7 murder and he will be in custody for the
8 reasonably foreseeable future; therefore, he
9 really has nothing to lose at this point in time.

10 I think this Court is well aware of the
11 fifth factor, the overall credibility and
12 character of the defendant having presided over
13 all of the proceedings in this case.

14 And finally with the sixth factor, Your
15 Honor, the timing is nothing but suspicious.
16 Mr. James was moved to Rush City October 4, 2017,
17 and then the affidavit comes out just a little
18 more than a year later in November of 2018. So I
19 think this Court should certainly find it
20 suspicious that it was only after Mr. James was
21 moved to Rush City, the same facility as Mr.
22 Bobo, that he did an actual confession.

23 So for all those reasons we would ask
24 that the Court deny admission of the affidavit
25 and testimony.

1 And, Your Honor, would you like me to
2 address the recordings now or would you rather
3 counsel respond to those first two?

4 THE COURT: Thank you. I'd like to have
5 Mr. Longsdorf respond at this time.

6 Mr. Longsdorf.

7 MR. LONGSDORF: Thank you, Your Honor.
8 And I think -- I want to talk a little bit about
9 whether there's -- I agree with counsel that I
10 think this comes down to that fourth 40(b)(3)
11 prong which was whether there's corroborating
12 circumstances to indicate the trustworthiness and
13 the statements against Sam James's interest that
14 we'd be offering, and I believe that the record
15 does contain sufficient corroborating
16 circumstances for admission in this particular
17 case.

18 So one of the pieces of the
19 corroborating evidence that opposing counsel
20 talked about and that came out at trial was this
21 idea that Mr. Bobo's vehicles gave him the
22 opportunity to commit this crime, or could have
23 been at the scene of the crime. But if we
24 actually look at what was testified to, the
25 (inaudible) who was the surviving victim of the

1 shooting said that -- he testified that it was an
2 SUV that had side-by-side back doors. He
3 testified it was an SUV that had tinted windows,
4 and he testified that it was a fancy -- or,
5 excuse me, that the SUV had fancy star rims on
6 it. And if we look at what Sam James said at the
7 grand jury, he specifically described the vehicle
8 as, quote, two-door Jimmy, end quote. And if we
9 look at the testimony that came in at trial about
10 those vehicles, I don't think they support the
11 idea that Mr. Bobo's vehicle actually could have
12 been there because Detective Folkens testified
13 that he saw one of the vehicles that Mr. Bobo had
14 access to, which he described as the K-15 Chevy.
15 And he testified that that vehicle opened as a
16 hatchback, not side to side. Nikoe Lee testified
17 about the other vehicle which was described as an
18 S-10 Blazer. She said that that had a hatchback,
19 that it didn't open side by side. And Nikoe Lee
20 also testified that I think the K-15 had a broken
21 window at the time and there was no testimony
22 from our end, and, in fact, I think he said there
23 were no broken windows or anything on the vehicle
24 that he saw. So the vehicle evidence, I think,
25 you know, Sam James says that he could have, you

1 know, he had three vehicles and could have been
2 there. Really if we look at the testimony I
3 don't think that the vehicles support the idea
4 that Mr. Bobo was actually there which gives rise
5 at least to the inference that it could have been
6 Sam James as the one who was there.

7 As far as the prior testimony, Sam James
8 has been under oath four times during --

9 THE COURT: Can I interrupt here. I
10 apologize, it's hard for me to jump in when you
11 can't see me. So once again, I feel as though
12 you're conflating the idea that it's
13 corroborating because it rules in, you know,
14 because it rules -- somehow it -- it establishes
15 that it wasn't Bobo, but that's not what you're
16 trying to get in. What you're trying to get in
17 is this is -- is James saying it's me, and how
18 does it corroborate James saying it's me. I
19 mean, for example -- I mean, presumably James
20 could have put in his affidavit something about
21 the car that he was -- I mean, I don't -- I'm
22 struggling here to understand how you think we
23 should let this in because somehow it makes it a
24 little more likely that it's not Mr. Bobo but
25 that's not really the same thing as it's Mr.

1 James.

2 MR. LONGSDORF: Well, from Mr. Bobo's
3 perspective, Your Honor, they go hand in hand,
4 that if Mr. James was not truthful about it being
5 Mr. Bobo, then it would tend to lend support to
6 the hearsay statements which are that it's
7 actually Mr. James. And I would just note that
8 Mr. James did actually make a statement in his --

9 THE COURT: But can I jump in? I just
10 want to add this, it is a bit beating a dead
11 horse. But Mr. James has already said it is not
12 Bobo; that's not new. He has said that from the
13 get-go, so there's nothing new about that.

14 MR. LONGSDORF: I agree, Your Honor,
15 that it's not new that he says it's -- not
16 Mr. Bobo. What's new is that he admits that it
17 was him who was actually the driver and not
18 Mr. Bobo.

19 THE COURT: Okay. And now you're
20 getting to my point that if that's the only new
21 piece then you're falling back on somehow trying
22 to get stuff in because it's -- because it shows
23 that it wasn't Bobo. But that showing that it's
24 not Bobo really doesn't get you any closer to
25 showing that it is James which is the only new

1 piece of information. That's what I'm struggling
2 with.

3 MR. LONGSDORF: I think in part it does
4 because Mr. James admitted during his testimony
5 that he was there. And I did just want to point
6 out that Mr. James did say which vehicle he was
7 driving in his affidavit.

8 THE COURT: All right.

9 MR. LONGSDORF: He said he was driving
10 Billy Tyson's Tahoe SUV. But, you know, we're in
11 a position, Your Honor, where we're trying to
12 make the strongest case we can to use
13 corroborating evidence that's available to try to
14 get this statement that Mr. James admits that it
15 was him, admitted, and you know, if we can show
16 -- our position is that by showing that Sam
17 James's testimony that there's reason to doubt
18 it, even from the beginning at the grand jury,
19 there's also the fact that he was -- told police
20 officers information before he went to trial that
21 wasn't true that supports that, and so that's --
22 we're trying to work within the record to show
23 that, Your Honor, and our position is we believe
24 that it does corroborate that.

25 Another piece of evidence we believe

1 that corroborates the fact that it was Sam James
2 and not Mr. Bobo is that Sam James himself did
3 admit that he was at Sherry Edwards' home and he
4 saw Mr. Bobo with Nikisha -- I think he used the
5 name Kisha -- and their son, which I think
6 supports the position that Mr. Bobo couldn't have
7 been the one that left there with Leonard
8 Slaughter, who I believe that they think is the
9 shooter and so I think that would support it.

10 There's also the fact that if we think
11 about the affidavit, if we think about the
12 investigator, if we think about the prison phone
13 calls that Mr. James made using his PIN number
14 through the prison phone system to a reporter, we
15 now have now four people that he has told, hey,
16 I'm the one that committed this crime. And I
17 know the Court heard from Demetrius Tyson and saw
18 the affidavits from Jesse Clark in 2012, but at
19 least now we're up to four different times and
20 four different people that Mr. James has made
21 this particular statement to that it was me that
22 was the driver and I was the one who was there.
23 And I think at least what's different about the
24 statements themselves and why they're more, I
25 believe, trustworthy in this case is that in 2012

1 the Court was in a position where it was
2 Demetrius Tyson and then an absent Jesse Clark,
3 who the Court had to take the statements through.
4 In this case, we have an investigator and then we
5 have these phone calls that Mr. James himself
6 made. He reached out to this person, he admitted
7 the crime. I mean, he walked through it in great
8 detail, how he did it, why he did it, you know,
9 how he managed to cover it up and all of that.
10 And so I do think that even just the statements
11 and the evidence itself in this case is much more
12 inherently trustworthy because ultimately,
13 especially with -- and I know I'm jumping ahead
14 -- but with the recordings, these are in Sam
15 James's own voice and on recording. And so I
16 think our position -- I don't think, our position
17 is that there's sufficient evidence here and the
18 nature of the evidence itself is sufficient that
19 would be appropriate to accept it under
20 804(b)(3).

21 THE COURT: Thank you. Ms. Wothe, why
22 don't you -- if you want to address any of
23 Mr. Longsdorf's points, go ahead, but otherwise
24 you can go forward to the -- to your motion
25 related to the jail calls.

1 MS. WOTHE: Thank you, Your Honor. I'll
2 move forward to the motion to the jail calls.
3 Defense is moving to admit three separate phone
4 calls between -- made by Sam James out of the
5 prison to a reporter who she herself has no
6 personal knowledge of these offenses. Your
7 Honor, the State is moving to preclude those
8 again as inadmissible hearsay.

9 Now, defense has identified three
10 separate calls. The first call was made by Sam
11 James on April 2nd, and the second two were both
12 made on July 16th. And the April 2nd call, Your
13 Honor, appears to be Mr. James's first call to
14 the reporter where essentially the substance of
15 it is I want to correct the situation because Mr.
16 Bobo is in for something he didn't do.

17 Mr. James does not confess to committing the
18 crime in that call but instead only generally
19 hints that Mr. Bobo is innocent, which, again, is
20 cumulative to everything that the jury and this
21 Court have already entertained. So because it's
22 inadmissible hearsay and because it's not within
23 the scope of this evidentiary hearing, we would
24 ask to preclude the April 2nd call.

25 Turning to the July 16th calls. Those

1 are back-to-back phone calls, Your Honor. And in
2 the second one, Mr. James does tell the reporter
3 that he was the shooter in this drive-by murder
4 -- or excuse me, not the shooter, the driver. He
5 does not name who the shooter was, but he does
6 admit to being the driver.

7 Your Honor, even though there is --
8 again, this is inadmissible hearsay. But more
9 importantly, Your Honor, again, there are no
10 guarantees of trustworthiness in this call even
11 though it is a recorded call to a reporter. Mr.
12 James also tells the reporter in this call that
13 essentially he confessed to the police for being
14 the driver in this murder, and that the police,
15 instead of pursuing prosecution against the man
16 who was in front of them admitting to a murder,
17 decided instead to ignore that confession and
18 create this false testimony that would implicate
19 De-Aunteze Bobo simply because they wanted
20 De-Aunteze Bobo off the street.

21 So the phone -- the substance of the
22 phone call itself, Your Honor, is just full of,
23 frankly, ridiculous narrative about what actually
24 happened. And compared to Mr. James's record of
25 statements as a whole, the simple statement to

1 the police about being the driver, that doesn't
2 make it have those guarantees of trustworthiness
3 when you look at the record as a whole.

4 So for those reasons, again, we would
5 move to preclude admitting this hearsay evidence.

6 THE COURT: I'm going to ask an
7 embarrassingly obvious question. Where are these
8 recordings? Is there any way for me -- I have
9 not heard them. Have they been made available to
10 the Court so I can listen to them for purposes of
11 making a ruling?

12 MR. LONGSDORF: Your Honor, I mailed
13 copies of all of our exhibits and the CDs to the
14 Court, as well as opposing counsel on Friday in
15 preparation for the hearing on Thursday so they
16 are on the way. And I anticipate based on the
17 delivery updates that they would be there today.

18 THE COURT: All right. Thank you. I
19 guess that wasn't as a silly question. Great.

20 Mr. Longsdorf.

21 MR. LONGSDORF: Yes, Your Honor. I
22 think -- so the way the calls are kind of set up
23 is that there's an April 2nd call and it's Sam
24 James makes that call and he talks a little bit
25 about why it is that he wanted to come forward

1 and why he wants to set the record straight about
2 the call. And so I think that one is relevant
3 and it does -- it goes directly toward whether
4 there's corroborating circumstances which is why
5 he wants to do this, why he's doing it now, and
6 so I do think that one is appropriate under that.

7 The first July 2nd call has Mr. James, I
8 think, almost in his own words admitting that
9 what he did was he put himself, or he put
10 De-Aunteze Bobo in his place because Sam James
11 was the one who was driving. He goes on in that
12 call to talk about he doesn't want to see
13 Mr. Bobo in trouble for something he didn't do.
14 He talks about being at Sherry Edwards' house
15 that night and how he subbed Mr. Bobo's name in
16 for his own. He talks about how he doesn't care
17 if somebody goes to Leonard Slaughter, and
18 Slaughter says, hey, Sam James is the driver. He
19 just wants the truth to come out.

20 The second call is from July 2nd, as the
21 Court will see when it gets it is Sam James go
22 through in great detail in his own words what
23 happened, what he did, how he did it, why he did
24 it. And so that's how he knew to say that --
25 what happened that night to make it look like

1 Mr. Bobo when it came time for him to try to get
2 the heat off from himself. And I think what kind
3 of sets the recordings apart, and I mentioned
4 this earlier, from any other 804(b)(3) case that
5 we've seen, is that these are actual recording
6 that -- of Mr. James in his own words admitting
7 these things. And I think that they -- I mean,
8 they kind of satisfy all the parts of it,
9 explaining why he did it, saying exactly what he
10 did, why he did what he did, both the shooting,
11 why the shooting happened and why he kind of
12 tried to push it off on someone else, and
13 explains why it is that he now is trying to set
14 the record straight and change things. And so I
15 do think these satisfy the requirements for
16 admissibility under 804(b)(3), and we would ask
17 that they be accepted.

18 THE COURT: Thank you.

19 Anything further on that, Ms. Wothe.

20 MS. WOTHE: Nothing additional from the
21 State. I will add, Your Honor, we do have
22 transcripts prepared of two of the three calls,
23 I'd be happy to forward those to Court and
24 counsel.

25 MR. LONGSDORF: I did include

1 transcripts with the recordings that I sent as
2 well.

3 THE COURT: You both independently
4 created transcripts?

5 MS. WOTHE: Yes.

6 THE COURT: Okay. All right. Here's
7 the thing, when I look at the factors under
8 804(b)(3) to test the trustworthiness of the
9 out-of-court statement, at least factors one and
10 two require understanding or knowing the contents
11 of the out-of-court statement. And while you
12 both have done a great job, I assume, summarizing
13 the out-of-court statements, I would really
14 prefer to rule on this after having seen the
15 transcripts or listen to the tape recordings of
16 the phone calls. And, frankly, I think only
17 makes sense given the fact that the factors seem
18 to contemplate that.

19 So I am going to defer ruling on the, I
20 guess this is 3C of the motions *in limine*, that
21 is on the jail calls. And I'm going to kind of
22 back up a little bit and ask if my understanding
23 is correct. Are Investigators Grostyan -- and
24 now I'm talking about your proposed witnesses,
25 Mr. Longsdorf. You've got Grostyan and an

1 Investigator Dodge. And judging by your
2 descriptions of their testimony, I've been
3 assuming that they're being -- they would be
4 coming forward, I guess, to lay foundation for
5 the statements; is that fair to say?

6 MR. LONGSDORF: Yes, Your Honor. I
7 guess with the -- with our private investigator,
8 we would be laying foundation for the affidavit
9 and then also trying to get testimony in directly
10 through the investigator related to his
11 interactions directly with Sam James. And
12 Investigator Dodge, we would present his
13 testimony to lay foundation for the prison phone
14 calls.

15 THE COURT: Okay. Well, getting back to
16 Grostyan. I don't understand what this -- what
17 this testimony is regarding his interactions with
18 Mr. James. And I'll pose it this way, imagine
19 that I rule on the motion *in limine* excluding the
20 James affidavit, essentially on the hearsay
21 grounds advanced by the State. If I do that, are
22 you still calling Grostyan for some reason?

23 MR. LONGSDORF: The primary purpose
24 would be to lay the foundation, the fact that he
25 met with Sam James, he identified him, he looked

1 at a picture of him, to verify the affidavit. So
2 I'm uncertain if we would call him if the
3 affidavit wasn't in play.

4 THE COURT: Okay. Well, I guess if that
5 that's the best you can answer today, that's the
6 best you can answer today, okay.

7 And similarly, although I think the
8 answer is a little more obvious, with regard to
9 Investigator Dodge, if I rule that the phone
10 calls are out under hearsay grounds, are you
11 calling Dodge or is that mooted because we don't
12 need -- because we don't need the foundation on
13 something that's been excluded on hearsay?

14 MR. LONGSDORF: I think that would be
15 moot from Mr. Bobo's perspective.

16 THE COURT: Okay. That's helpful. All
17 right. So just by way of summary, I have
18 deferred ruling on the striking of testimony from
19 Mr. James last week. I have granted the motion
20 *in limine* precluding petitioner from offering
21 testimony from Ms. Armstrong for the reasons set
22 forth in the hearing today, as well as in my
23 August 6, 2020 order.

24 And with regard to the motion *in limine*
25 number three, which relates to Mr. James's

1 affidavit and the jail calls, I am -- I'm also
2 deferring on those. And I anticipate that I'm
3 hoping I will -- you know, I'll address this
4 before Thursday. I might just -- if I make a
5 decision before Thursday, I might simply
6 communicate with you informally telling you how I
7 ruled, and then when we're on the record Thursday
8 I will actually read a more formal rulings into
9 the record at that time. And that's -- and
10 that's kind of the best I can do for you here
11 today.

12 Is there anything else we should address
13 by way of preparing for Thursday?

14 MS. WOTHE: Your Honor, the only thing I
15 would add is I told counsel that the Court rules
16 that the recordings of the jail calls do come in,
17 I would stipulate to their admission, so in
18 either regard we shouldn't need Investigator
19 Dodge, just so the Court is aware of the
20 logistics of the hearing.

21 THE COURT: That's very helpful to know
22 because, obviously, if you folks have
23 appropriately focused on the hearsay analysis and
24 -- but there's also that background foundation
25 analysis, and it sounds like that's getting --

1 that you've agreed on that with regard to the
2 jail calls if they survive a hearsay analysis.

3 All right. Anything else?

4 MS. WOTHE: Nothing additional from the
5 State.

6 MR. LONGSDORF: Nor from Mr. Bobo, Your
7 Honor.

8 THE COURT: And I'm assuming we'll be
9 able to handle the Rush City connection on
10 Thursday. I think Ms. Stubbe has been handling
11 that. And it went smoothly last week so I
12 presume it will this week. Great. Then thank
13 you, all. We are going to adjourn at this time
14 and we will reconvene on Thursday remotely.

15 MS. WOTHE: Thank you.

16 THE COURT: And, again, I'll let you
17 know informally. I give it -- candidly, I've got
18 a bit of a backlog, I'm going to give it like a
19 75 percent chance that you'll get a thumbs-up or
20 a thumbs-down before Thursday; otherwise, I'll
21 rule -- I'll make a record first thing Thursday
22 before we take testimony. Thank you, all. We
23 are adjourned.

24 MS. WOTHE: Thank you, Your Honor.

25 (Proceedings concluded.)

